



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-094 ]

Refillable Stainless Steel Kegs from the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

DATES: Applicable October 10, 2018.

FOR FURTHER INFORMATION CONTACT: Nicholas Czajkowski or Robert Brown at (202) 482-1395 or (202) 482-3702, respectively, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On September 20, 2018, the U.S. Department of Commerce (Commerce) received a countervailing duty petition (CVD Petition) concerning imports of refillable stainless steel kegs (kegs) from the People's Republic of China (China), filed in proper form on behalf of the American Keg Company LLC (the petitioner), a domestic producer of kegs.<sup>1</sup> The CVD Petition was accompanied by antidumping duty (AD) petitions concerning imports of kegs from China, Germany, and Mexico.

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<sup>1</sup> See the petitioner's letter, "Petitions for the Imposition of Antidumping Duties on Imports of Refillable Stainless Steel Kegs from Germany, Mexico, and the People's Republic Of China and Countervailing Duties on Imports of Refillable Stainless Steel Kegs from the People's Republic Of China," dated September 20, 2018 (the Petition).

On September 25, 2018, Commerce requested supplemental information pertaining to certain aspects of the Petition in two separate supplemental questionnaires, one addressing the programs alleged as countervailable subsidies, and one primarily addressing scope clarification issues.<sup>2</sup> The petitioner filed additional information on September 27, 2018.<sup>3</sup>

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of China (GOC) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of kegs in China and that imports of such products are materially injuring, or threatening material injury to, the domestic kegs industry in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(E) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support necessary for the initiation of the requested CVD investigation.<sup>4</sup>

#### Period of Investigation

Because the Petition was filed on September 20, 2018, the period of investigation is January 1, 2017, through December 31, 2017.

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<sup>2</sup> See Commerce's Letters titled "Petition for the Imposition of Countervailing Duties on Imports of Refillable Stainless Steel Kegs from the People's Republic of China: Supplemental Questions," and "Petitions for the Imposition of Antidumping Duties on Imports of Refillable Stainless Steel Kegs from the People's Republic of China, the Federal Republic of Germany, and Mexico, and Countervailing Duty Imports from the People's Republic of China: Supplemental Questions," both dated September 25, 2018.

<sup>3</sup> See the petitioner's Letter, "Supplement to the Petition for the Imposition of Countervailing Duties on Imports of Refillable Stainless Steel Kegs from China: Response to the Department's Supplemental Questions," dated September 27, 2018 (Supplement).

<sup>4</sup> See the "Determination of Industry Support for the Petition" section, *infra*.

### Scope of the Investigation

The product covered by this investigation is keys from China. For a full description of the scope of these investigations, *see* the Appendix to this notice.

### Comments on the Scope of the Investigation

During our review of the Petition, we contacted the petitioners regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.<sup>5</sup> As a result, the scope of the Petitions was modified to clarify the description of merchandise covered by the Petitions. The description of the merchandise covered by these investigations, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the Preamble to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).<sup>6</sup> Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,<sup>7</sup> all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on October 30, 2018, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on November 9, 2018, which is 10 calendar days from the initial comments deadline.<sup>8</sup>

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<sup>5</sup> See Supplement at "General Issues Questionnaire" section (General Issues Supplement) at 1-9; *see also* Revised Scope, at Exhibit 1.

<sup>6</sup> See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (Preamble).

<sup>7</sup> See 19 CFR 351.102(b)(21) (defining "factual information").

<sup>8</sup> See 19 CFR 351.303(b).

Commerce requests that any factual information parties consider relevant to the scope of the investigation be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD and CVD investigations.

### Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).<sup>9</sup> An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

### Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified representatives of the GOC of the receipt of the Petition and provided them the opportunity for consultations with respect to the CVD Petition.<sup>10</sup> The GOC did not request consultations.

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<sup>9</sup> See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011). See also *Enforcement and Compliance: Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx>, and a handbook can be found at <https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

<sup>10</sup> See Commerce's Letter, "Countervailing Duty Petition on Refillable Stainless Steel Kegs from the People's Republic of China," dated September 21, 2018.

### Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition; or (ii) if there is a large number of producers in the domestic industry, determine industry support using any statistically valid sampling method to poll the “industry.”

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,<sup>11</sup> they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce’s determination is subject to limitations of time and information. Although this may result in

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<sup>11</sup> See section 771(10) of the Act.

different definitions of the like product, such differences do not render the decision of either agency contrary to law.<sup>12</sup>

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.<sup>13</sup> Based on our analysis of the information submitted on the record, we have determined that kegs, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.<sup>14</sup>

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the “Scope of the Investigation,” in the Appendix to this notice. To establish industry support, the petitioner provided its own production of the domestic like

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<sup>12</sup> See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989)).

<sup>13</sup> See Volume I of the Petition, at 33-36.

<sup>14</sup> For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, see Countervailing Duty Investigation Initiation Checklist: Refillable Stainless Steel Kegs from the People’s Republic of China (China CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Refillable Stainless Steel Kegs from the People’s Republic of China, the Federal Republic of Germany, and Mexico (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

product in 2017.<sup>15</sup> The petitioner states that there are no other known producers of kegs in the United States; therefore, the Petition is supported by 100 percent of the U.S. industry.<sup>16</sup>

Our review of the data provided in the Petition, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.<sup>17</sup> First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.*, polling).<sup>18</sup> Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.<sup>19</sup> Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.<sup>20</sup> Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and it has demonstrated sufficient industry support with respect to the CVD investigation that it is

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<sup>15</sup> See Volume I of the Petition at 49 and 51.

<sup>16</sup> *Id.* at 5-6 and Exhibit GEN-10; *see also* General Issues Supplement, at 10-18 and Exhibit SUPP-GEN-6.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*; *see also* section 702(c)(4)(D) of the Act.

<sup>19</sup> See China CVD Initiation Checklist, at Attachment II.

<sup>20</sup> *Id.*

requesting that Commerce initiate.<sup>21</sup>

### Injury Test

Because China is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry.

### Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.<sup>22</sup>

The petitioner contends that the industry’s injured condition is illustrated by a significant volume of subject imports and an increasing share of subject imports relative to total imports; underselling and price depression or suppression; recent declines in production and capacity utilization; negative impact on the domestic industry’s investment, cash flows, and inventories; decline in the domestic industry’s financial performance; and lost sales and revenues.<sup>23</sup> We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as cumulation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.<sup>24</sup>

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<sup>21</sup> *Id.*

<sup>22</sup> *See* Volume I of the Petition, at 37-38.

<sup>23</sup> *Id.* at 23-33, 37-53, and Exhibit GEN-35; *see also* General Issues Supplement, at 18-33 and Exhibit SUPP GEN-7.

<sup>24</sup> *See* China CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Refillable Stainless Steel Kegs



### Initiation of CVD Investigation

Based on the examination of the Petition, we find that the Petition meets the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of kegs from China benefit from countervailable subsidies conferred by the GOC. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 21 of the 24 subsidy programs alleged in the petition. For a full discussion of the basis for our decision to initiate or not on each program, *see* China CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

### Respondent Selection

The petitioner named 26 producers/exporters as accounting for the majority of exports of kegs to the United States from China.<sup>25</sup> In the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on quantity and value (Q&V) questionnaires issued to potential respondents. Commerce normally selects mandatory respondents in a CVD investigation using U.S. Customs and Border Protection (CBP) entry data. However, for this investigation, the Harmonized Tariff Schedule of the United States (HTSUS) numbers under which the subject merchandise would enter (7310.10.0010, 7310.10.0050, 7310.29.0025, and 7310.29.0050) are basket categories containing a wide variety of manufactured steel products unrelated to kegs. We, therefore, cannot rely on CBP entry data

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from the People's Republic of China, the Federal Republic of Germany, and Mexico (Attachment III).

<sup>25</sup> *See* Volume I of the Petition at Exhibit GEN-23.

in selecting respondents. We instead intend to issue Q&V questionnaires to each potential respondent, for which the petitioner has provided a complete address. Commerce will post the Q&V questionnaire along with the filing instructions on the Enforcement and Compliance Web site at <http://trade.gov/enforcement/news.asp>.

Exporters and producers of kegs from China that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from the Enforcement and Compliance Web site, at the URL given above.

Responses to the Q&V questionnaire must be submitted by the relevant Chinese exporters/producers no later than 5:00 p.m. ET on October 24, 2018, which is two weeks from the signature date of this notice. All Q&V responses must be filed electronically via ACCESS. We intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Commerce's Web site at <http://enforcement.trade.gov/apo>.

#### Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public version of the Petition have been provided to the GOC *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

### ITC Notification

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

### Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of kegs from China are materially injuring, or threatening material injury to, a U.S. industry.<sup>26</sup> A negative ITC determination will result in the investigation being terminated.<sup>27</sup> Otherwise, this investigation will proceed according to statutory and regulatory time limits.

### Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted<sup>28</sup> and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.<sup>29</sup> Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information

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<sup>26</sup> See section 703(a)(2) of the Act.

<sup>27</sup> See section 703(a)(1) of the Act.

<sup>28</sup> See 19 CFR 351.301(b).

<sup>29</sup> See 19 CFR 351.301(b)(2).

being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

#### Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in these investigations.

#### Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.<sup>30</sup> Parties must use the certification formats

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<sup>30</sup> See section 782(b) of the Act.

provided in 19 CFR 351.303(g).<sup>31</sup> Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

#### Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.*, the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act and 19 CFR 351.203(c).

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Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

Dated: October 10, 2018.

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<sup>31</sup> See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (“*Final Rule*”); see also frequently asked questions regarding the *Final Rule*, available at [http://enforcement.trade.gov/tlei/notices/factual\\_info\\_final\\_rule\\_FAQ\\_07172013.pdf](http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf).

## Appendix

### Scope of the Investigation

The merchandise covered by this investigation are kegs, vessels, or containers that are approximately cylindrical in shape, made from stainless steel (*i.e.*, steel containing at least 10.5 percent chromium by weight and less than 1.2 percent carbon by weight, with or without other elements), and that are compatible with a “D Sankey” extractor (commonly known as a “D Coupler” or “Sankey”) (refillable stainless steel kegs) with a nominal liquid volume capacity of 10 liters or more, regardless of the type of finish, gauge, thickness, or grade of stainless steel, and whether or not covered by or encased in other materials. Refillable stainless steel kegs may be imported assembled or unassembled, with or without all components (including spears, couplers or taps, necks, collars, and valves), and be filled or unfilled.

“Unassembled” or “unfinished” refillable stainless steel kegs include drawn stainless steel cylinders that have been welded to form the body of the keg and welded to an upper (top) chime and/or lower (bottom) chime. Unassembled refillable stainless steel kegs may or may not be welded to a neck, may or may not have a valve assembly attached, and may be otherwise complete except for testing, certification, and/or marking.

Subject merchandise also includes refillable stainless steel kegs that have been further processed in a third country, including but not limited to, attachment of necks, collars, spears or valves, heat treatment, pickling, passivation, painting, testing, certification or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope refillable stainless steel keg.

Specifically excluded are the following:

- (1) vessels or containers that are not approximately cylindrical in nature (*e.g.*, box, “hopper” or “cone” shaped vessels);
- (2) stainless steel kegs, vessels, or containers that have either a “ball lock” valve system or a “pin lock” valve system (commonly known as “Cornelius,” “corny” or “ball lock” kegs);
- (3) necks, spears, couplers or taps, collars, and valves that are not imported with the subject merchandise; and
- (4) stainless steel kegs that are filled with beer, wine, or other liquid and that are designated by the Commissioner of Customs as Instruments of International Traffic within the meaning of section 332(a) of the *Tariff Act of 1930*, as amended.

The merchandise covered by this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7310.10.0010, 7310.00.0050, 7310.29.0025, and 7310.29.0050.

These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

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